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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,278

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Peter Prusak

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POLYONE CORPORATION
33587 WALKER ROAD
AVON LAKE, OH 44012

EXAMINER

SANDERS, KRIELLION ANTONETTE

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/595,278	Applicant(s) PRUSAK, PETER	
	Examiner Kriellion A. Sanders	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-6, 12-14 and 17-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4, 12 and 17 include an additive. Claims 6, 14 and 19 negate the presence of these additives. Claims 6, 14 and 19 fail to further limit the claims from which they depend. The claims are indefinite in their wording.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6-10, 12, 14, and 17-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by WO 00/66659 A.

The reference claims polyethylene terephthalate, colorant and a-tocopherol. The a-tocopherol is used in wide amounts but most preferably in amounts ranging from 0.0001 to 2.0% by weight of the polymer. The compositions are used to make containers. Applicant's claims 14

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and 19 indicate that the amount of additives of the claims from which they depend may be 0%.

Therefor, it is clear that the claims do not require the additive.

See claims 1, 6, 9, 11, 26, 28 and 42, page 3, lines 14-20 page 13, lines 16-24 page 19, lines 9-13 and page 20, lines 14-17 and page 21, lines 3-5.

Claims 1-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Teumac et al, US Patent No. 5,663,223.

Teumac et al discloses A liner composition for a potable-fluid-container closure element, the liner composition consisting essentially of a polymer; a first flavor protectant compound of an inorganic sulfite compound or a tocopherol compound, said first flavor protectant compound being present in an amount of from about 0.3 to about 5% by weight of the liner composition; and a second, different flavor protectant compound of an ascorbate compound, a hydrazide compound, an inorganic sulfite compound, **or a tocopherol** compound. The second flavor protectant compound is present in an amount of between about 0.1 and about 5% by weight of the liner composition. The tocopherol compound is dl-.alpha.-tocopherol. The composition also includes one or more of a plasticizer, a heat stabilizer, a lubricant, a blowing agent, an antioxidant, or a pigment. Silica pigment is discloses as a suitable pigment in the Tables of the working examples. Patentee indicates that a wide variety of polymers may be used in accordance with the teaching of the present invention. For use in applications such as crown or closure liners, the polymer is preferably a polymeric thermoplastic, such as PVC, EVA, polyethylene terephthalate ("PET"), PE, or polypropylene ("PP"), or a polyurethane. See the Tables and claims 1-17.

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-19 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by WO 03/031507 to Stoll et al.

5. All components of the present invention are set forth in the World Patent. No patentable difference is readily available.

6. See page 31, paragraph 4, page 41, paragraphs 4,6,7 page 48, paragraph 1-3 claims 1, 4, 9,10 and page 50, paragraph 7.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over

WO 00/66659 A as applied to claim 1, 2, 4, 6-10, 12, 14, and 17-19 above, and further in view of Teumac et al US Patent No. 5,863,964.

Teumac et al discloses a closure element for a bottled fluid, which element includes a liner composition consisting essentially of a polymer, a hydrazide compound in an amount sufficient to at least partially inhibit the formation of off-flavor causing substances in the liner composition, and a further, different flavor protectant compound in an amount which is an inorganic sulfite compound or a tocopherol compound.

The other flavor protectant compound is present in an amount of from about 0.3 to about 5% by weight of the liner composition. The closure element further comprises adding to the liner composition, one or more of a plasticizer, a heat stabilizer, a lubricant, a blowing agent or a pigment. Patentee discloses polyethylene terephthalate as a suitable polymer for purposes of the invention at col. 5, lines 53-62.

In view of the teachings of Teumac et al, it would have been obvious to one of ordinary skill in the art to utilized a-tocopherol in amounts ranging from 0.3 to 5.0 % by weight of the composition. Additionally, it would have been obvious to include known additives in the composition.

See column 5, lines 21-23 column 5, lines 56, 66, 67 column 6, lines 47-49, 62, 63 column 8, lines 17-24 column 8, lines 29-32 claims 1, 3, 5 and table 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kriellion A. Sanders whose telephone number is 571-272-1122. The examiner can normally be reached on Monday through Thursday 8:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kriellion A. Sanders/

Primary Examiner, Art Unit 1796

Kriellion A. Sanders
Primary Examiner
Art Unit 1796

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